

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PATRICK MORAN, as President of the EMPIRE
STATE REGIONAL COUNCIL OF CARPENTERS
and JOHN FUCHS, PATRICK MORIN, ANTHONY
MACAGNONE, MICHAEL CONROY, DAVID
HAINES, GEOFFREY JAMES, JAMES MALCOLM,
WILLIAM MACCHIONE, ALAN EHL, WILLIAM
WEITZMAN, KEVIN HICKS, JOSEPH OLIVIERI,
DALE STUHL MILLER, ARTHUR GODSELL,
ROBERT CARLINO, PAUL J. O'BRIEN, JR.,
JOSEPH GANIRO, ROSS PEPE, RICHARD
O'BEIRNE, JAMES LOGAN, ANTHONY
CAROPRESSO, ANTONIO MARTINS, TODD
HELFRICH and FRANK WIRT as Trustees of the
EMPIRE STATE CARPENTERS WELFARE
PENSION, VACATION, ANNUITY, SCHOLARSHIP,
APPRENTICE-TRAINING, LABOR-MANAGEMENT
COOPERATION and CHARITABLE TRUST FUNDS,

Civil Action No. 05-4716
(DRH)(ETB)

Plaintiffs,

-against-

FRANK SASSO, ANDREA SASSO, ROSINA
BUILDERS & GENERAL CONTRACTING
and SRC CONSTRUCTION CORP.,

Defendants

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APPEARANCES:

Meyer, Suozzi, English & Klein, P.C.

Attorneys for Plaintiffs

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Melville, New York 11747

By: John H. Byington III

Edward J. Carroll, Esq.

Attorney for Defendants Frank Sasso, Andrea Sasso and Rosina Builders & Gen'l Contracting
2733 Route 209

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HURLEY, Senior District Judge:

By Order dated April 30, 2009, the Court referred Plaintiffs' motion for attorneys' fees and costs to Magistrate Judge E. Thomas Boyle, pursuant to 28 U.S.C. § 636(b). On June 17, 2009, Judge Boyle issued a Report and Recommendation that Plaintiffs be awarded attorneys' fees and costs in the amount of \$53,160.56 but only as against defendants Frank Sasso and Rosina Builders & General Contracting in view of the Chapter 13 Bankruptcy filing of defendant Andrea Sasso. (*See In re Andrea D. Simmons, f/k/a Andrea E. Sasso*, 09-36312 (Bankr. S.D.N.Y.)). More than ten days have elapsed since service of the Report and Recommendation, and the parties have not filed any objections to it.

Pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, this Court has reviewed the Report and Recommendation for clear error, and now concurs in both its reasoning and its result except to the extent it recommends an award against Defendant Rosina Builders & Contractors. According to the complaint, Rosina Builders & Contractors is a sole proprietorship operated by Frank Sasso and Andrea Sasso. Upon review of the bankruptcy petition filed by Defendant Andrea Sasso, it appears she filed her petition "Andrea E. Simmons f/k/a/ Andrea E. Sasso d/b/a Rosina Builders" and therefore the bankruptcy stay applies to Defendant Rosina Builders & General Contracting. *See* Bankr. Code § 1304 (captioned "debtor engaged in business" and permitting a debtor to operate his business unless the court orders otherwise and subject to limitations prescribed by the court and the trustee). *See generally Queenie, Ltd. v. Nygard International*, 321 F.3d 282, 287-88 (2d Cir. 2003) *In re McCormick*, 381 B.R. 594, (S.D.N.Y. 2008). Accordingly, this Court adopts the June 17, 2009 Report and Recommendation of Judge

Boyle to the extent it recommends that Plaintiffs recover attorneys' fees and costs from Defendant Frank Sasso in the amount of \$53,160.56 plus post-judgment interest from September 13, 2007 until the award is paid.

SO ORDERED.

Dated: Central Islip, New York
July 2, 2009

/s/

Denis R. Hurley
Senior District Judge